

**Congress of the United States**  
**Washington, DC 20515**

May 23, 2011

Administrator Lisa Jackson  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Administrator Jackson,

The U.S. Court of Appeals for the Ninth Circuit has reaffirmed its ruling of last August that forest roads are “point sources” as a matter of law and that EPA regulations require a discharge permit under section 402 of the Clean Water Act. The ruling first invalidates a 35-year old rule that exemplified a flexible and effective approach to the regulation of water quality -- the definition of forest management identifying appropriate point source and nonpoint source categories at 40 C.F.R. 122.27. The Ninth Circuit then dismisses EPA’s effort to retain this flexible approach in the stormwater program and ruled that EPA’s 1990 stormwater regulations included forestry within the definition of “industrial activity,” thus triggering the section 402(p) permit requirement.

When EPA adopted this rule in 1976, it defined the key activities associated with responsible forest management as nonpoint sources subject to “best management practices” or BMPs. EPA concluded that the nonpoint source BMPs better addressed water runoff from forest management than would discharge permits which the Clean Water Act requires for point sources. As you know, the Clean Water Act directs that each state must develop and implement BMPs.

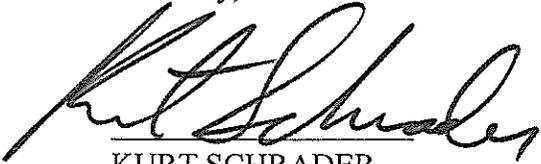
Forestry activities in the United States are now conducted under the most comprehensive program of BMPs of any land use activity. Studies have shown that these BMPs are widely used and highly effective. Most states engage with the forest landowners in a process of continuous improvement for their BMPs, even to the extent of engaging in peer review programs with other states.

Today the greatest threat of deforestation comes from the conversion of forests to non-forest uses that produce a higher economic value. The families, businesses and individuals that own nearly 60 percent of our nation’s forests depend on the returns they get from the products their forests produce to make additional investments in sound, long-term forest management. Regulations such as the nonpoint source definition of silviculture are critical factors enabling landowners to maintain their land in forests.

Decisions like this regarding the silviculture definition do not further the protection of water quality but rather hasten the conversion of forestland into other uses. As new housing starts remain at their lowest levels in decades, and with forest products markets losing jobs as well,

this is hardly the time to impose unnecessary new regulatory burdens. As the President recently pointed out in **Executive Order 13563**, agencies should seek out regulatory approaches that reduce regulatory burdens and maintain flexibility. We urge you reaffirm that the BMP approach is the correct one for responsible forest management legally, environmentally, and economically by defending the regulations in all appropriate proceedings and by taking the steps necessary to limit the scope of this ruling to the extent possible, particularly in the face of conflicting case law in other Circuits.

Sincerely,



KURT SCHRADER  
Member of Congress



JAIME HERRERA BEUTLER  
Member of Congress



DOC HASTINGS  
Member of Congress



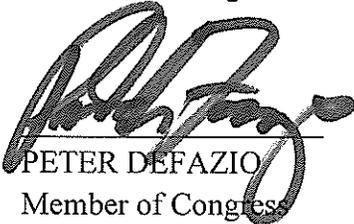
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Member of Congress



FRANK LUCAS  
Member of Congress



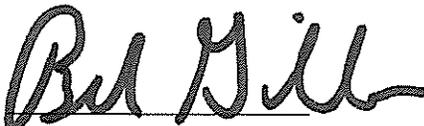
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Member of Congress



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Member of Congress



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Member of Congress



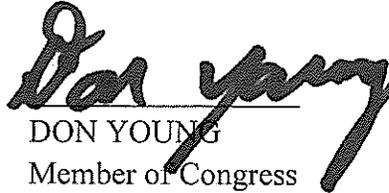
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Member of Congress



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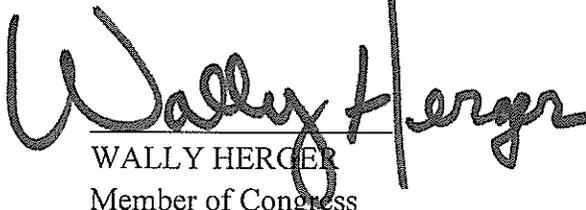
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SANFORD BISHOP

Member of Congress



WALLY HERGER

Member of Congress



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Member of Congress



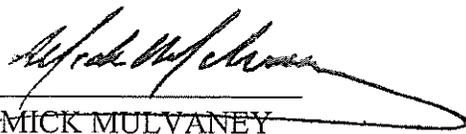
TERRI SEWELL

Member of Congress



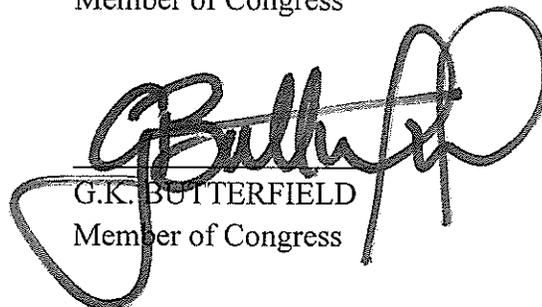
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Member of Congress



G.K. BUTTERFIELD

Member of Congress



BRETT GUTHRIE

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Member of Congress



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Member of Congress



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Member of Congress



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Member of Congress



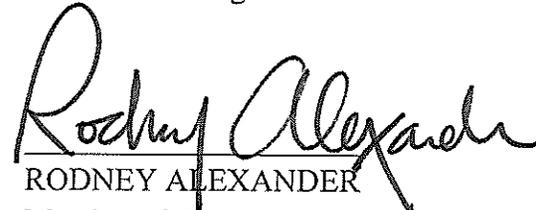
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Member of Congress



STEVE WOMACK  
Member of Congress



DAN BENISHEK  
Member of Congress



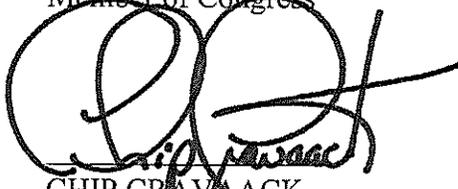
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Member of Congress



ALAN NUNNELEE  
Member of Congress



LYNN WESTMORELAND  
Member of Congress



CHIP CRAVAACK  
Member of Congress



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Member of Congress